

Advisory Opinion

IECDB AO 2006-03

March 30, 2006

The Honorable Mary Mosiman
Story County Auditor & Commissioner of Elections
Story County Administration
900 Sixth Street
Nevada, Iowa 50201-2087

Dear Auditor Mosiman:

This opinion is in response to your letter of January 9, 2006, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

We understand you request this opinion in your capacity as the Story County Auditor and Commissioner of Elections and that you are seeking this opinion on the issue of a candidate being required under the campaign laws to place a "paid for by" attribution (attribution) on a nomination petition (petition) when the candidate does not modify the petition. You advise us that the Iowa State Commissioner of Elections prescribes the petitions and the petitions do not include instructions to include an attribution. You are concerned that conflicting answers exist concerning this issue and that County Auditors need a response in the event that objections are filed alleging that a submitted petition did not contain the attribution.

QUESTION:

Are candidates required to place a "paid for by" attribution on nomination petitions?

OPINION:

Iowa Code section 68A.405 and Board rules 351—4.38 through 351—4.41 govern the placement of attributions. Pursuant to Iowa Code section 68A.405(1)"b" unless an exception exists an attribution is required to be placed on "published material designed to expressly advocate the nomination, election, or defeat of a candidate for public

office....” Iowa Code section 68A.405(1)“a”(3) defines “published material” as any “newspaper, magazine, shopper, outdoor advertising facility, poster, direct mailing, brochure, internet web site, campaign sign, or any other form of printed general public political advertising.”

In reviewing the nomination petition, the Board is of the opinion that so long as the document is not modified to become “political advertising,” then the nomination petition is not “published material” and would not require an attribution under Iowa Code section 68A.405.

In closing, the Board encourages any person who modifies a nomination petition to contact the Board for a determination on whether the modified document has become “political advertising” that requires the placement of an attribution.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel